

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In the Matter of the Termination of the Parent-Child
Relationship of C.P., Father, C.H., Mother, and A.H. and I.P.,
Children,

C.P.,

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

April 25, 2024

Court of Appeals Case No.

23A-JT-1924

Appeal from the Orange Circuit Court

The Honorable Steven L. Owen, Judge

Trial Court Cause Nos.

59C01-2212-JT-150

59C01-2212-JT-151

Memorandum Decision by Judge Foley
Judges Riley and Brown concur.

Foley, Judge.

- [1] C.P. (“Father”) is the father of A.H. and I.P. (together, “the Children”), and his parental rights to the Children were terminated by a judgment issued by the trial court. Father appeals, claiming the trial court’s judgment was clearly erroneous because the trial court’s conclusions were not supported by its findings in that the trial court relied upon improper bases for its termination of his parental rights. Finding no error, we affirm.

Facts and Procedural History

- [2] Father and C.H. (“Mother”)¹ (together, “Parents”) are the biological parents of the Children. Father has a lengthy criminal history that began prior to the birth of the Children. In 2009, Father was convicted of Class D felony receiving stolen property and was incarcerated for 106 days in late 2010 until January 10, 2011, due to violating his probation. In 2013, Father was convicted of Class D felony theft and violated his probation again, which resulted in his incarceration. That same year, Father was convicted of Class C felony child molesting and was sentenced to four years in the Indiana Department of Correction (“the DOC”) with credit for time served of 210 days and the

¹ Mother signed consents for adoption as to the Children and does not participate in this appeal.

remainder suspended to probation. In March 2015, Father was sentenced to two years of his suspended sentence in the child molesting case after he violated his probation. A.H. was born on July 23, 2015, while Father was incarcerated, and therefore, Father did not see A.H. until he was almost one year old. In May 2018, Father was convicted of Level 5 felony dealing in methamphetamine and was sentenced to three years in the DOC, where he remained incarcerated until the spring of 2020. By that time, A.H. was almost five years old, and Father had been incarcerated for most of A.H.'s life. Meanwhile, the Indiana Department of Child Services ("DCS") became involved with Father's three oldest children, R.P., K.P., and S.E. in 2019 because of Father's incarceration and their mother's drug use.²

- [3] I.P. was born on September 27, 2020. DCS became involved with the family in September 2020 due to the fact that I.P. was born drug exposed. When I.P. was born, her meconium was positive for amphetamines and buprenorphine, and her umbilical cord tested positive for methamphetamine and amphetamines as well as two prescribed drugs. When DCS became involved with Parents and the Children in the present case, the family was living in West Baden Springs, Indiana with a family friend who Father referred to as Dad. The family stored all of their belongings and slept in one bedroom in the home. The conditions of the home were poor. The home was cluttered with trash and dirty dishes, had cockroaches, smelled strongly of cigarette smoke, had a structurally unsound

² R.P., K.P., and S.E. have a different mother from the Children.

porch, and there were metal objects, car parts, and animal feces in the yard. The inside flooring was unstable and sagging, and the carpet was stained and worn-down. Parents would not put I.P. on the floor due to the poor condition of the floor, which impacted her ability to engage in tummy time to build muscle tone. Building muscle tone was important for I.P. because she had been diagnosed with a weakened muscle condition referred to as Hypotonia.

[4] An informal adjustment concerning the Children was initiated by DCS and was approved by the trial court on November 24, 2020. The goals of the informal adjustment were to help Mother obtain sobriety, monitor Father's sobriety, improve the family's home conditions, and help Parents with financial stressors. Parents were offered family preservation services and random drug screens through the informal adjustment. The family preservation services included home-based casework for Parents to address the home conditions, work on sobriety issues, and assist with financial struggles. At the time that the informal adjustment was initiated, Father was sober but was on parole after serving time for dealing in methamphetamine. When the informal adjustment began, the first home-based caseworker struggled to meet with Father one on one, and after a few months, a new caseworker, Mary Nebb ("Nebb") was assigned to Parents. Nebb worked with the family from January 2021 through June 2021, and also struggled to have meetings with Father. During that period of time, Nebb only met with Father eight times with his work schedule being a barrier to him being able to meet weekly. Nebb reported that Father was engaged in the

casework session for about seventy percent of each session and the rest of the time, he would complain about DCS or the service provider.

- [5] During the informal adjustment, Father obtained employment, but he quit and then went back to the same employer several times. Before Father completed parole, his drug screens were negative. However, in April 2021, Father began testing positive for methamphetamine. Domestic violence was also an issue during the informal adjustment, and the conditions of the home had also not improved. Even after the informal adjustment was extended, Parents' methamphetamine use continued, the conditions of their home did not improve, and domestic violence continued to be an issue.
- [6] On May 27, 2021, DCS removed the Children due to those ongoing issues. On June 1, 2021, DCS filed a petition alleging that the Children were children in need of services ("CHINS"), alleging that Parents were not appropriate caregivers for the Children due to their continued substance abuse, domestic violence in the home, and poor home conditions. On the same day, the trial court authorized Children's continued removal from the care of Parents.
- [7] After removal, DCS referred I.P. to First Steps due to concerns about her health issues. She was eight months old and was not developmentally on target for her age. She could not hold her head up, hold a bottle, crawl, sit, or roll, and she had very low muscle tone. DCS referred A.H., who was nearly six years old, to therapy because he was exhibiting signs of physical aggression and animal cruelty. A.H. worked with Rebecca Westgate at Ireland Home-Based Services

(“Ireland”) from June 2021 until November 2021. His goals were to focus on the trauma of being removed and exposure to domestic violence and to address his negative and defiant behaviors.

[8] On July 28, 2021, the trial court adjudicated the Children as CHINS based on admissions by Parents. Father admitted that “[h]e would benefit from substance abuse treatment, domestic violence services, counseling, and parent/homebuilding skills to understand the [C]hildren’s needs, resolve relationship instability, and improve the conditions of the home.” Ex. Vol. 1 pp. 170, 173. On September 7, 2021, the trial court held a dispositional hearing and entered a dispositional order on September 10. In pertinent part, Father was ordered to maintain suitable, safe, and stable housing; maintain a legal and stable source of income; refrain from the use of illegal drugs; obey the law; complete a substance abuse assessment and follow all recommended treatment; submit to random drug screens; not commit any acts of domestic violence; complete a domestic violence assessment and all recommended services; and attend all scheduled visitations.

[9] After family preservation services under the informal adjustment were closed due to Children’s removal, Nebb continued providing Father and Mother with homebased case management for about six months. Father attended approximately ten appointments during that time, and it was difficult to meet with him due to his work schedule and other services and visitation. During appointments, Nebb would occasionally see bruises on Mother and once observed Mother to have a “goose egg.” Tr. Vol. 1 p. 86. Nebb worked with

Father on trying to obtain housing and his driver's license, but Father was never able to achieve either of these goals during the time they worked together. One of the barriers to Father obtaining suitable housing was that he was on the Sex Offender Registry, which narrowed his options on locations where he could live.

[10] In September 2021, Luke Hochgesang ("Hochgesang") with Ireland Home Based Services began providing individual therapy to Father, which lasted for approximately one year. Father's goals during therapy were to work on emotion regulation, trauma, and substance abuse. During their session, Hochgesang would often drive Father around while working on goals such as housing, resourcing, and transportation and also working on therapy objectives.

[11] In the fall of 2021, A.H. was placed at an inpatient behavioral health unit for behavioral treatment because he was engaged in defiant and aggressive behaviors in school. After his inpatient placement, in October 2021, A.H. was referred to, and began therapy with, Ashley Wilson ("Wilson") at Life Springs Health. At that time, he was exhibiting "outburst behaviors" and "threatening to hurt other people." *Id.* at 135. A.H. was diagnosed with disruptive mood dysregulation disorder and behavior disorder, and Wilson was helping him to identify his emotions and feelings so that he could decrease the number of outbursts he had. In December 2021, A.H. began case management services with Krista Kirk ("Kirk") at Life Springs through a school referral. Kirk was also assisting A.H. in addressing his aggressive behaviors, identifying triggers, and working on coping skills. Many of A.H.'s negative behaviors occurred

after visits with Father (and Mother)—with his behaviors being more physical and aggressive after visits with Father.

[12] In March 2022, Father relapsed on methamphetamine. Nebb observed Father under the influence of drugs on March 8, 2022. Father told her he needed to go to rehab, and he was “pacing back and forth” and acting “very paranoid.” *Id.* at 85. Nebb was able to get Father an assessment on the telephone through Brentwood Springs for substance abuse treatment, and they were able to schedule an appointment for Father with Hochgesang transporting Father. Father, however, did not make it to the appointment.

[13] Father was incarcerated from March 2022 until April 2022 after being charged with two counts of Level 6 felony failing to register as a sex offender. Father was unemployed during this time from March 2022 until May 2022. Father was able to briefly obtain employment, but it was short-lived, and he remained unemployed until September 2022. Father’s unemployment caused him to struggle to meet his own needs, including a period of homelessness that summer, and inconsistent participation in therapy from April 2022 until September 2022.

[14] In the meantime, Mother gave birth to her and Father’s third child, L.H., in May 2022. DCS removed L.H. from Parents’ care due to her being born drug

exposed and Parents' lack of suitable and stable housing. L.H. remained outside of Father's care for the remainder of this underlying CHINS case.³

[15] In May 2022, Father began fatherhood engagement services with Mary Bayes (“Bayes”) at Ireland. Father’s goals in fatherhood engagement were to obtain and maintain employment, obtain resources and transportation, and work on the fatherhood engagement curriculum. When Bayes first began working with Father in May, he was homeless, and she was only meeting with him “generally whenever there was a need.” *Id.* at 169. Then, a few months after Bayes began working with Father, he anticipated returning to jail, so his search for employment and housing stopped. Between August 2022 and September 2022, Father had supervised visits with I.P. and L.H. through Kalli Britton (“Britton”). The visits were twice a week, and Father attended only five visits despite more being offered. Father was usually not prepared for visits with food and other items, and claimed he did not want to bring things with him because he felt it was too unsanitary. In September 2022, Father completed a parenting assessment with Wendy Middleton (“Middleton”) at Ireland. In the assessment, Father admitted to beginning to use methamphetamine when he was twenty-five years old and that he was using methamphetamine every day up until a couple of months before the assessment. Middleton determined Father had a “high probability of having a substance use disorder” and recommended he participate in individual therapy to address healthy

³ L.H. is not the subject of the current termination proceedings.

relationships, anger management, domestic violence, substance use, and coping skills; home-based case management or fatherhood engagement; and in-patient substance abuse treatment.

[16] Also, in September 2022, Father pleaded guilty to one count of Level 6 felony failing to register as a sex offender and was sentenced to 364 days in jail with credit for thirty days served. Father was incarcerated from the time of his plea hearing until February 2023. While incarcerated, Father continued receiving DCS-provided services and was able to complete the fatherhood engagement curriculum. Additionally, Middleton began providing Father individual therapy in December 2022 while he was incarcerated. She met with him virtually on a weekly basis and worked with Father on maintaining his sobriety, relapse prevention, anger management, coping skills, and healthy relationships. In December 2022, the trial court terminated Father's parental rights to his three older children, R.P., K.P., and S.E., due to Father's pattern of substance abuse, pattern of incarceration, domestic violence, and inability to provide them with a suitable and stable home.⁴ On December 15, 2022, DCS filed a petition to terminate Father's parental rights to the Children.

[17] Father was released from incarceration in mid-February 2023, and after his release, he continued working with Middleton for therapy and with Bayes for fatherhood engagement sessions. Father had made progress in working toward

⁴ This court affirmed the trial court's judgment terminating Father's parental rights to R.P., K.P., and S.E. in an unpublished opinion on August 10, 2023. *In re R.P.*, No. 23A-JT-16 (Ind. Ct. App. Aug. 10, 2023).

his individual therapy goals, but Middleton thought that he should still participate in outpatient substance abuse treatment and that he needed to continue in therapy. Father had made progress in fatherhood engagement with Bayes, but he had still needed to show that he could maintain long-term stability. Father and Mother separated in February 2023 after Father was released.

[18] After being released from incarceration, Father revived his supervised visitations with I.P. in February 2023. The visitations occurred weekly for two hours. Father also had therapeutically supervised visits with A.H. Sometimes after visits with Father, A.H. had an increase in “unregulated behaviors” where he “cannot control his emotions.” Tr. Vol. 2 p. 6.

[19] On May 17, 2023, and June 20, 2023, the trial court held the termination hearing. At the hearing, Father testified that he was still living with his family friend that he referred to as Dad, in the home from where the Children had been removed. He admitted that the conditions of the home had not improved and were not suitable for the Children. At the time of the hearing, Father was still a registered sex offender, which was a barrier to his ability to find other housing. He testified that he was a “few months” away from obtaining a property where he could put a trailer and live, but there were many things that still had to occur for him to be able to move there. Tr. Vol. 1 p. 63. At the time of the hearing, Father was employed at Taco Bell and had worked there for a month. Father testified that he did not yet have his driver’s license, which had been identified as a goal since the beginning of this case. There were multiple

finances that needed to be paid in order for him to obtain his license, and although Father had the financial means to pay those fines at different times during the life of the case, he had not done so.

[20] Evidence was presented that Father had been testing negative for drugs since his release from incarceration in mid-February 2023, although he had failed to submit to “a couple” of screens in that time. Tr. Vol. 1 p. 207. This nine-month span of time was the longest period of sobriety that Father experienced during the case, and five months of that time was while he was incarcerated. Family case manager Dina Dorsett (“FCM Dorsett”) testified that she continued to be concerned about Father’s substance use due to the length of time in his life that he had substance abuse issues and his “pattern” of “sobriety and relapse.” *Id.* at 207. FCM Dorsett testified that Father would have to remain sober “for an extended period of time” to show he had broken his pattern. *Id.* at 231. Father admitted that domestic violence was a part of his relationship with Mother and continued between the two of them after the Children’s removal and up until his most recent period of incarceration.

[21] Evidence was presented that A.H.’s behavior had improved since his removal, and he was starting to identify and verbalize his feelings and utilize coping skills. A.H. was now “easier to calm down” and was not having as many outbursts. Tr. Vol. 1 p. 136. He continued to need therapy and case management to build on those skills and to continue decreasing his negative behaviors. Testimony was given that A.H.’s home life is important to his progress in therapy and that it would be beneficial for him to have structure and

to participate in extra-curricular activities. A.H. was doing well in his placement but continued to struggle at school. Evidence was also presented that I.P. had caught up developmentally and was walking and talking. She had been diagnosed with Pulmonary Stenosis, a narrowing of the arteries in her heart, which required her to see a specialist and would likely require surgery in the future. She also had Nystagmus, which caused her eyes to dart back and forth, and would also likely require surgery. I.P. was doing well in her current placement, and her foster parents were meeting her needs and maintaining her medical appointments.

[22] At the time of the hearing, the Children had been removed from Father's care for over two years and had never been returned to his care since their removal on May 27, 2021. FCM Dorsett testified that she believed that termination of Father's parental rights was in the Children's best interest because of the substantial likelihood that Children would be neglected if returned to Father's care due to his pattern of criminal activity, history of domestic violence, and unsuitable housing. FCM Dorsett stated it was unlikely that the conditions that led to the Children's removal would be remedied because Father had a pattern of instability in his life due to periods of sobriety and then relapse, his various periods of incarceration, multiple changes in employment, and an inability to maintain all of the things that the Children need for any length of time. CASA Lauren Shipman ("CASA Shipman") also testified that she believed that termination of parental rights was in the Children's best interests because of Father's history of being unable to provide for Children's needs and to maintain

all of the things necessary to care for the Children. She testified that A.H. expressed to her that he was concerned that if he returned to Father's care he would be removed again. She herself had concerns that A.H.'s progress in not having outbursts and other angry behavior would be lost. CASA Shipman also testified that she did not believe there was a reasonable probability that Father would be able to permanently remedy the conditions that led to the Children's removal because he had a history of instability and no evidence of an ability to maintain the stability the Children needed. She also stated that she had specific concerns for Father's ability to consistently care for the Children. DCS's plan for the Children upon the termination of Father's parental rights was adoption, with the Children's respective placements willing to adopt them.

[23] On July 24, 2023, the trial court issued its order terminating Father's parental rights to the Children. In making this determination, the trial court specifically concluded that the "totality of the evidence" supported a "finding that the Children needed stability, permanency, and a safe environment which cannot be provided by Father at this time due to Father's inability to obtain suitable housing and maintain suitable housing, pattern of criminal behavior and incarceration, and pattern of substance use." Appellant's App. Vol. III p. 15. Father now appeals.

Discussion and Decision

[24] While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise their children, the law allows for the termination of parental rights based on a parent's inability or

unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child’s interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose of terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the child’s emotional and physical development is threatened. *Id.* The trial court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[25] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). In evaluating the trial court’s findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *Id.* If the evidence and reasonable inferences support the trial court’s decision, we must

affirm. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[26] Before an involuntary termination of parental rights may occur, the State must allege and prove, among other things:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a [CHINS];

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, "if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship." I.C. § 31-35-2-8(a) (emphasis added). Further,

because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the trial court need only find one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence, we need not address all of the requirements if we find that one has been proven. *See* I.C. § 31-35-2-4(b)(2)(B); *A.D.S.*, 987 N.E.2d at 1157 n.6.

A. Condition for Removal Not Remedied

[27] Father does not challenge the trial court’s findings of fact, so he has waived any arguments relating to the unchallenged findings, and we therefore accept all of the trial court’s findings as true. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true). Instead, Father first argues that the trial court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of the Children and the reasons for placement outside of the home would not be remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home will not be remedied, a court engages in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, the court must determine what conditions led to the child’s placement and retention in foster care, and second, the court must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[28] In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against “‘habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.’” *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, “[trial] courts have properly considered evidence of a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment.” *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).

[29] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent’s behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). “We entrust th[e] delicate balance to the [trial] court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *E.M.*, 4 N.E.3d at 643. When determining whether the conditions resulting in removal would be remedied, the trial court may consider the parent’s response to the offers of help from DCS or the service providers. *D.B.*, 942 N.E.2d at 873.

[30] Here, the Children were removed from Father’s care on May 27, 2021, due to Father’s continued drug use, the poor condition of the home, and ongoing domestic violence between Father and Mother. The Children have continued to remain outside of Father’s care because, over the more than two-year length

of the case, he did not show any extended period of stability without drug use, incarceration, domestic violence concerns, or financial concerns. Further, he was still living in the home from which the Children were removed that was deemed to be unsuitable for the Children to live in.

[31] The evidence presented at the termination hearing revealed that, over the course of the case, Father had a pattern of engaging in criminal activity, of using methamphetamine, of having financial instability, and of not having suitable housing. *See In re E.M.*, 4 N.E.3d at 643 (“Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.”). Father had frequent periods of incarceration prior to the start of the CHINS case, which led to him not being involved in A.H.’s life until A.H. was five years old and not being involved in the lives of his three older children. I.P. was removed from Father’s care when she was only eight months old and has remained out of the home for the two years since. Therefore, Father’s continued drug use, incarcerations, and lack of suitable housing during the CHINS case resulted in him not being involved in I.P.’s life either. Father was incarcerated twice during the CHINS case, and he relapsed on methamphetamine both before and after Children’s removal. Between his incarcerations, Father experienced periods of homelessness and unemployment. One of the barriers to Father obtaining suitable housing was that he was on the Sex Offender Registry, which narrowed his options on locations where he could live.

[32] The evidence presented at the termination hearing revealed that Father had made some efforts during the months before the termination hearing, and he was no longer incarcerated and was having a period of sobriety. However, the trial court was within its discretion to weigh these recent efforts against his habitual patterns over the life of the case. *See In re K.T.K.*, 989 N.E.2d at 1234 (concluding that “the trial court was within its discretion to ‘disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother’s history of conduct prior to those efforts’” and that “Mother’s prior, habitual pattern of substance abuse and criminal conduct resulted in continued neglect of the Children such that ‘there is a substantial probability of future neglect or deprivation’” (citations omitted)). Father had been sober for nine months at the time of the termination hearing. The hearing was held in May and June of 2023, Father had been released from incarceration in February 2023, and he had only been sober during his five-month jail term and the four months since he had been released. At the hearing, Father testified that he had been using methamphetamine for over ten years of his life, with his longest period of sobriety being during a twenty-seven-month period of incarceration prior to DCS’s involvement in this case. The evidence revealed that Father had a long history of engaging in criminal activity, going in and out of jail, where he would quit using drugs—especially when on parole or probation—and then resuming his methamphetamine use when he was no longer supervised. Father had been incarcerated or using drugs for most of the Children’s lives. Due to this long history of drug use and Father’s pattern of sobriety and relapse, DCS continued to be concerned about his ability to remain drug free.

[33] Further, despite participating in some services and the length of the case, at the time of the termination hearing, Father had still not remedied his housing issue. He was still residing in the home from which the Children were removed because of unsafe and unsanitary conditions, and the conditions of the home had not improved. DCS offered Father family preservation services during the informal adjustment and fatherhood engagement services during the CHINS case to assist Father in locating suitable housing for himself and the Children. However, Father did not fully engage in the services until he was incarcerated the most recent time. Therefore, even taking into account that Father had achieved some stability by not being incarcerated for four months and being sober at the time of the hearing, he still did not have suitable housing for the Children.

[34] Additionally, at the time of the termination hearing, the Children's needs had progressed, and they both had mental and physical health needs that required a stable caregiver to ensure those needs were being met. A.H. demonstrated aggressive behaviors and had been diagnosed with disruptive mood dysregulation disorder and behavior disorder. While the case was pending, he had been placed in an inpatient facility to receive treatment and had received individual therapy and case management both before and after his placement in the facility. At the time of the hearing, he had made improvements, and his service providers believed that he needed to continue participating in therapy and case management services to build on his coping skills he had learned and to continue decreasing his negative and aggressive behaviors. CASA Shipman

was concerned that placing A.H. in Father's care would lead to A.H. regressing, especially since A.H. had expressed to her that he feared being placed back into Father's care and then being removed again. Also, I.P. had progressed developmentally since being removed from Father's care, but she had been diagnosed with Pulmonary Stenosis and Nystagmus, both of which would likely require surgery in the future. Father's inability to maintain stability was concerning given A.H.'s mental health needs and I.P.'s physical diagnoses.

[35] In his brief, Father suggests that the termination order is defective because the trial court's decision was based, in part, on improper considerations. That is, Father argues that the trial court impermissibly terminated his parental rights based on his historical failures and not his current ability to care for the Children. He also argues the trial court impermissibly relied on his incarceration in its determination to terminate his parental rights.

[36] Father relies on *In re C.M.*, 960 N.E.2d 169 (Ind. Ct. App. 2011), for his contention that the trial court impermissibly relied on his historical failures rather than his current capacity to parent. In that case, the children were removed and adjudicated CHINS because the father was charged with battering the children, and the mother was incarcerated. *Id.* at 171. Thereafter, the mother was cooperative with DCS and "consistent with visitation," and the children were returned to her for "a trial home visit." *Id.* The mother subsequently tested positive for oxycodone, for which she did not have a current prescription; illegal drugs were found in the home; and the children

were again removed. *Id.* at 172. DCS filed a petition to terminate the mother's parental rights, which the trial court granted. *Id.*

[37] On appeal, a panel of this court reversed the termination order, holding that the mother's past shortcomings as a parent were thoroughly addressed in the trial court's order, but the trial court made no findings as to the mother's current circumstances or evidence of changed conditions. *Id.* at 175. Observing that the trial court was to judge parental fitness at the time of the termination hearing, while taking into consideration the evidence of changed conditions, this court found the findings were insufficient to establish each element necessary to support the conclusion that termination was warranted. *Id.*

[38] We find *C.M.* to be distinguishable from the present case. Here, while Father is correct that the trial court made multiple findings regarding his historical failures, the trial court cited these past issues as reasons why Father had not demonstrated that he had changed the conditions that resulted in the Children's removal and continued placement outside of the home. As stated above, although the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, it must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *E.M.*, 4 N.E.3d at 643. We entrust this delicate balance to the trial court, which has the discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* The trial court considered Father's current circumstances but assigned greater

weight to his long pattern of conduct rather than his short-term sobriety and release from incarceration. Specifically, the trial court acknowledged that Father had been released from incarceration since February 2023 and that he had maintained his sobriety since he became incarcerated in September 2022. However, it gave more weight to Father's pattern of criminal behavior leading to his inability to be present in the Children's lives and his pattern of obtaining sobriety and then relapsing. In addition, the trial court considered Father's current circumstance of being unable to provide a suitable and safe home for the Children. Two years after the Children's removal, Father was still in no better position to provide them with a suitable home. Looking at the trial court's findings as a whole, it is clear that the trial court did not base its determination solely on Father's historical failures but rather concluded that his habitual patterns outweighed his more recent ability to comply with some, but not all, of his obligations under the dispositional order.

[39] Father next argues that the trial court's focus on his incarceration is fatal to its judgment. He relies on *K.E. v. Indiana Department of Child Services*, 39 N.E.3d 641, 649 (Ind. 2015), which we find distinguishable. In that case, the father was incarcerated shortly after the child was born, and the child was adjudicated a CHINS after the mother left the child unattended. *Id.* at 644. Throughout the CHINS and termination proceedings, the father remained incarcerated; however, he "made substantial efforts towards bettering his life through programs that were available during his incarceration." *Id.* at 648. Additionally, during the termination proceedings, DCS presented no evidence

to controvert the father's post-incarceration plans for employment or to establish that the home the father planned to live in upon his release was unsuitable for the child. *Id.* at 647. Nonetheless, the trial court concluded that the reasons for the child's removal were unlikely to be remedied and, in concert with its other findings, terminated the father's parental rights.

[40] On appeal, our Supreme Court reversed the trial court's termination order, finding that there was "seemingly nothing else that [the father] could have been doing to demonstrate his dedication to obtaining reunification" and that the father's incarceration "alone" was insufficient to demonstrate that the reasons for removal would not be remedied. *Id.* at 648–49. Here, unlike the father in *K.E.*, the trial court's findings regarding the removal conditions were not only based on Father's current incarceration but rather on his pattern of being incarcerated throughout the proceedings. Further, the trial court also based its findings on Father's pattern of substance abuse and domestic violence and his inability to secure suitable housing for the Children. Therefore, contrary to Father's assertion, his incarceration was not the sole basis or focus for the trial court's determination.

[41] A child "cannot wait indefinitely for their parents to work toward preservation or reunification." *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quoting *E.M.*, 4 N.E.3d at 648), *cert. denied*. We, therefore, conclude that the trial court's conclusion that there was a reasonable probability that the conditions which resulted in the Children's removal and continued placement outside the home would not be remedied was supported by sufficient evidence.

[42] Father also argues that the trial court's conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child was not supported by clear and convincing evidence. However, we need not address this argument because of the disjunctive nature of the subsection (b)(2)(B) and because we have concluded that the trial court's determination that the conditions for the Children's removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence.

B. Best Interests

[43] Father also argues that the trial court's conclusion that termination was in the best interests of the Children was not supported by clear and convincing evidence. In determining what is in the best interests of the child, a trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the trial court must subordinate the interests of a parent to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent's historical inability to provide a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In re A.P.*, 981 N.E.2d at 82. Testimony of the service providers, in addition to evidence that the conditions resulting in removal will not be remedied, are

sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[44] Our review of the totality of the evidence leads to the conclusion that, at the time of the termination hearing, Father had not appreciably improved his ability to safely parent the Children and did not have suitable and safe housing for the Children. Father had recent compliance with some of the court-ordered services, and was recently sober and not incarcerated, but did not have suitable and stable housing at the time of the hearing with no concrete timeline of when such housing could be obtained. Father had not demonstrated any appreciable length of stability due to his history of periods of sobriety and relapse and of becoming incarcerated. Although the Children had been removed from his care for over twenty-four months, Father never progressed to unsupervised visitations with the Children and had not demonstrated that he could take care of the Children's unique and demanding mental health and physical needs. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Father would not remedy the reasons for the Children's removal from his care. Additionally, both FCM Dorsett and CASA Shipman

testified that termination was in the best interests of the Children. FCM Dorsett testified that she believed termination was in the Children's best interests because she thought there was a substantial likelihood that the Children would be neglected if returned to Father's care due to his pattern of criminal activity, history of domestic violence, and unsuitable housing. She testified that Father had a pattern of instability in his life due to his periods of sobriety and then relapse, his various periods of incarceration, multiple changes in employment, and an inability to maintain all of the things that the Children would need for any length of time. CASA Shipman also testified that she believed that termination of parental rights was in the Children's best interests because of Father's history of being unable to provide for the Children's needs and to maintain all of the things necessary to care for the Children. She had concerns that A.H.'s progress in curbing his outbursts and other angry behavior would be lost if he were returned to Father's care. CASA Shipman also testified that she did not believe that Father would be able to permanently remedy the conditions that led to the Children's removal because he had a history of instability and no evidence of an ability to maintain the stability the Children needed, and she had specific concerns for Father's ability to consistently care for the Children.

[45] Father argues that the trial court improperly considered the stability the Children were receiving in their current placement and that the fact that the Children are in a stable home cannot form the basis proving that the termination of parental rights was in the Children's best interests. Father is correct that "a parent's constitutional right to raise his or her own child may not

be terminated solely because there may be a better home available for that child.” *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014) (citing *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001)), *trans. denied*. Here, however, the Children’s placement was not the sole basis for the trial court’s decision to terminate Father’s parental rights. Instead, the trial court found Father had not appreciably improved his ability to safely parent the Children, had not demonstrated that he could take care of the Children’s specific mental health and physical needs, and still did not have suitable and safe housing for the Children despite the case’s twenty-four-month duration. Further, both FCM Dorsett and CASA Shipman testified that termination was in the Children’s best interests. We, therefore, conclude that the trial court did not terminate Father’s parental rights solely because the Children were placed in a stable home.

[46] The trial court “need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E.*, 39 N.E.3d 641, 649. The Children should not have to wait any longer for Father to have suitable and stable housing and to be able to demonstrate that he has the stability to consistently care for and parent the Children. The trial court’s conclusion that termination of Father’s parental rights was in the Children’s best interests was supported by clear and convincing evidence.

Conclusion

[47] We, therefore, conclude that the trial court did not err in its judgment terminating the Father's parental rights to the Children.

[48] Affirmed.

Riley, J., and Brown, J., concur.

ATTORNEY FOR APPELLANT

Matthew J. McGovern
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana